In the High Court of Uttaranchal, at Nainital.
A.O.No. 284/2004
(F.A.F.O. No. 576 of 1991)

National Insurance Company Ltd.
Divisional Office, Civil Lines,
Allahabad .. Appellant.

Vs.

1- Smt. Ram Dei W/o Late Bachan Singh,
2- Rajendra Singh (minor) S/o Bachan Singh
3- Km. Sarita,
4- Km. Vijaya
5- Km. Arati
6- Km. Guiddi
7- Km. Shakuntala
Daughters of Bachan Singh,
8- Smt. Katigi W/o late Jular Singh
All R/O Village Sari, P.O. Daura,
Tehsil Ukhimath,
District Chamoli .. Respondents.

Sri Bindesh Kumar Gupta, learned counsel for the appellant.
Sri G.S. Negi, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J:

This appeal, U/S 173 of the Motor Vehicles Act, has been preferred against the judgment and award dated 16-3-1991, passed by M.A.C.T./District Judge, Chamoli, in M.A.C.P. No. 7/1990, Smt. Ram Dei and others Vs. National Insurance Company.

2- Brief facts of the case are that the deceased Bachan Singh was the owner of Ambassador Taxi No. U.R.M. 8500. On 27-7-1989 at about 7 P.M. the deceased Bachan Singh, owner of the car was driving it and the car met with an accident near Ukhimath, in which Bachan Singh died at the place of the accident itself. At the time of the accident the deceased Bachan Singh was aged 40 years and was doing the work of the driver on the offending car. He also owned a biscuit factory and used to earn about Rs. 2,500/- per month

from it. The claimants/respondents, who are the widow, children and mother respectively of the deceased have preferred the claim petition in lieu of death of Bachan Singh against the insurer of the offending vehicle.

3- The National Insurance Company filed written statement before the Tribunal and alleged that the deceased was the owner of the offending car and at the time of accident he himself was driving the vehicle and in terms of insurance policy the insurer is not liable to pay any compensation. It was also alleged that the deceased was driving the vehicle in the night-time and the accident had occurred due to his own negligence, therefore, the insurance company is not liable to any compensation.

4- On the basis of pleadings of parties, the Tribunal framed the following issues:-

1- Whether Bachan Singh had died on 27.7.1989 at about 7 P.M. in the accident of Taxi Car No. U.R.M. 8500 near Ukhimath motor road?.
2- Whether the accident had occurred due to the own negligence of deceased Bachan Singh, owner and driver of the car as alleged in the W.S.?.
3- Whether the claimants claimed exorbitant amount of compensation, as alleged in paragraph No.9 of the W.S.?.
4- Whether the accident occurred due to some mechanical defect in the taxi car?.
5- Relief, amount of compensation to which the claimants are entitled to get?.

5- Both the parties adduced their evidence and the Tribunal after having assessed the evidence and hearing the learned counsel for the parties decreed the claim petition for a sum of Rs. 72,000/- along with an interest @ 12% per annum. The amount awarded is directred to be paid by the insurer of the vehicle, i.e. National Insurance Company Ltd.

7- Feeling aggrieved by the aforesaid judgment and award the insurer of the vehicle has preferred this appeal before the Allahabad High Court which has been transferred to this court after creation of new State.

8- Heard learned coaunsel for the parties and perused the record.

9- The main point involved in this case is as to whether the claimants, who are the legal heirs of the deceased, who was the owner of the vehicle and was driving the vehicle at the time of the accident, are entitled for the compensation to be paid by the insurer of the vehicle or not.

10- It is an admitted fact that the deceased being the owner of the offending vehicle was insured. The claimants are the legal representatives of the deceased. The insurance policy paper is available on the record of the court below which indicates that the insured had deposited the amount at the time of the insurance of the vehicle pertaining to the limited liability to 'paid driver'. The insurance of the offending vehicle was also for the third party liability. Therefore, in view of the insurance policy the insurance company had a liability to pay the amount of compensation only to the third

party or to the 'paid driver'. In the instant case the insured is the owner of the vehicle, therefore, he is not covered by the condition of the insurance policy and in these events of the circumstances the insurance company cannot be held to be liable to make the payment of the amount of compensation awarded by the Tribunal.

10- The Hon'ble Apex Court in a case **Oriental Insurance Co. Ltd. Vs. Sunita Rathi** reported in **(1998) 1 SCC 365** has clearly held that 'the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property.' Thus where the insured, i.e. the owner of the vehicle has no liability to a third party, the insurance company has also no liability to pay the amount of compensation. This view has again been reiterated by the Hon'ble Apex Court in an another decision **Dhanraj Vs. New India Assurance CO. Ltd. and another,** reported in **(2004) 8 Supreme Court Cases 553.**

11- I could lay my hands on a Division Bench decision of Allahabad High Court in the case of **The Oriental Fire and General Insurance CO. Ltd Vs. Smt. Shakuntala Devi,** in which it has been held that there is use of words in the Act " incurred by him" and this word "him" refers to the insured. Therefore, when the insured is dead, then the question of indemnifying the liability of deceased insured does not arise. The Division Bench has further held that the contractual liability of the insurance company under Section 95 of the old Act ceases as soon as the insured is dead. The liability does not extend to the heirs of the deceased.

12- In view of the aforesaid discussion, I am of the view that the insurer/appellant cannot be held to be liable to make the payment of the amount of compensation in view of the terms and conditions of the insurance policy.

13- The appeal thus succeeds and is allowed. The impugned judgment and award passed by the Tribunal concerned is set aside.

14- In case if the appellant has deposited the amount of compensation awarded by the Tribunal concerned and the same has been paid to the claimants/ respondents, the insurance company in those events of circumstances will have the recoverable right.

15- Further, in case if the balance amount of compensation is still in deposit with the Tribunal, the same shall be refunded to the appellant.

(B.C. Kandpal, J.)

Dated: 10-10-2006
ISB